

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF KANSAS

UNITED STATES OF AMERICA,)
)
 Plaintiff,)
)
 v.)
)
 BLUE TEE CORP.,)
 GOLD FIELDS MINING LLC ,)
 and)
 THE DOE RUN RESOURCES)
 CORPORATION,)
)
 Defendants.)
 _____)

CIVIL ACTION NO. 08-1316-WEB-DWB

COMPLAINT

The United States of America ("United States"), by and through the undersigned attorneys, by authority of the Attorney General of the United States, and at the request and on behalf of the Administrator of the United States Environmental Protection Agency ("EPA"), alleges:

PRELIMINARY STATEMENT

1. This is a civil action on behalf of the EPA against Blue Tee Corp. ("Blue Tee"), Gold Fields Mining LLC ("Gold Fields"), and The Doe Run Resources Corporation ("Doe Run") (collectively "Defendants") under Sections 106 and 107(a) of the Comprehensive Environmental Response, Compensation, and Liability Act ("CERCLA"), 42 U.S.C. §§ 9606 & 9607(a), as amended, and Section 7003 of the Resource Conservation and Recovery Act ("RCRA"), 42 U.S.C. § 6973. In this action, the United States seeks an order requiring Defendants to

implement response actions selected in EPA's Record of Decision Amendment ("ROD") dated September 29, 2006, for the Treece Subsite of the Cherokee County Superfund Site in Cherokee County, Kansas, and requiring Defendants to reimburse the United States for certain costs that EPA has incurred in response to releases or threatened releases of hazardous substances at the Treece Subsite. The United States also seeks a declaration that the defendants are liable for further response costs incurred by EPA in connection with the Treece Subsite except as specifically provided in the Consent Decree entered on January 12, 2000, in Civil Action No. 99-1399-WEB (D. Kansas).

JURISDICTION AND VENUE

2. This Court has jurisdiction over the subject matter of this action pursuant to 28 U.S.C. §§ 1331 and 1345, Sections 106(a) and 113(b) of CERCLA, 42 U.S.C. §§ 9606(a) and 9613(b), and Section 7003 of RCRA, 42 U.S.C. § 6973.

3. Venue is proper in the District of Kansas pursuant to 28 U.S.C. § 1391(b) and Section 113(b) of CERCLA, 42 U.S.C. § 9613(b), because the claims arose in this District and the release or threatened release of hazardous substances occurred in this District.

DEFENDANTS

4. Defendant Blue Tee is a Delaware corporation. Blue Tee's predecessor was an owner and/or operator of the Treece Subsite at the time of disposal of hazardous substances within the meaning of Section 107(a)(2) of CERCLA, 42 U.S.C. § 9607(a)(2), and contributed to the handling and/or disposal of a solid waste at the Treece Subsite within the meaning of Section 7003 of RCRA, 42 U.S.C. § 6973.

5. Defendant Gold Fields is a Delaware limited liability company. Gold Fields'

predecessor was an owner and/or operator of the Treece Subsite at the time of disposal of hazardous substances within the meaning of Section 107(a)(2) of CERCLA, 42 U.S.C. § 9607(a)(2), and contributed to the handling and/or disposal of a solid waste at the Treece Subsite within the meaning of Section 7003 of RCRA, 42 U.S.C. § 6973.

6. Defendant Doe Run is a New York corporation. Doe Run's predecessor was an owner and/or operator of the Treece Subsite at the time of disposal of hazardous substances within the meaning of Section 107(a)(2) of CERCLA, 42 U.S.C. § 9607(a)(2), and contributed to the handling and/or disposal of a solid waste at the Treece Subsite within the meaning of Section 7003 of RCRA, 42 U.S.C. § 6973.

7. Defendants are persons as defined in Section 101(21) of CERCLA, 42 U.S.C. § 9601(21), and Section 1004(15) of RCRA, 42 U.S.C. § 6903(15).

GENERAL ALLEGATIONS

8. There have been and continue to be "release[s]" and "threatened release[s]" of "hazardous substances" at and from the Treece Subsite within the meaning of Sections 101(14) and (22), 106, and 107 of CERCLA, 42 U.S.C. §§ 9601(14) and (22), 9606, & 9607. These hazardous substances include lead, zinc, and cadmium, which are also "solid wastes" within the meaning of Sections 1004(27) and 7003 of RCRA, 42 U.S.C. §§ 6903(27) & 7003.

9. The Treece Subsite is a "facility" within the meaning of Sections 101(9) and 107 of CERCLA, 42 U.S.C. §§ 9601(9) & 9607.

10. As a result of the releases and threatened releases of hazardous substances at and from the Treece Subsite, pursuant to Section 104 of CERCLA, 42 U.S.C. § 9604, the United States has undertaken, and continues to undertake, response actions within the meaning of

Section 101(23), (24), and (25) of CERCLA, 42 U.S.C. § 9601(23), (24) & (25), and has incurred, and will continue to incur costs of response not inconsistent with the National Contingency Plan.

11. On August 20, 1997, EPA issued a Record of Decision that embodied its decision selecting the response action to be implemented with respect to the Treece Subsite ("1997 ROD"). Pursuant to a Consent Decree entered on January 12, 2000, in Civil Action No. 99-1399-WEB (D. Kansas) ("2000 Consent Decree"), Defendants were required to perform that response action with respect to the Treece Subsite, generally consisting of residential cleanups, and to pay certain response costs. That response action, except for operation and maintenance, was completed on or about October 1, 2004.

12. On September 29, 2006, EPA issued an amendment to the 1997 ROD that embodied its decision selecting additional response action to be implemented with respect to the Treece Subsite ("2006 ROD"). This response action was neither required, nor liability therefor resolved, pursuant to the 2000 Consent Decree. This response action includes, among other things, excavation, consolidation, and capping of mine wastes on the land surface within the Treece Subsite. As set forth in the 2006 ROD, EPA has determined that actual or threatened releases of hazardous substances from the site, if not addressed by implementing the response actions selected therein, present a current threat to public health, welfare, or the environment.

FIRST CLAIM FOR RELIEF

(Injunctive relief pursuant to CERCLA Section 106(a), 42 U.S.C. § 9606(a) and RCRA Section 7003, 42 U.S.C. § 6973)

13. Paragraphs 1 through 12 of this Complaint are incorporated herein by reference.

14. Section 106(a) of CERCLA, 42 U.S.C. § 9606(a), provides in pertinent part:

[W]hen the President determines that there may be an imminent and substantial endangerment to the public health or welfare or the environment because of an actual or threatened release of a hazardous substance from a facility, he may . . . secure such relief as may be necessary to abate such danger or threat

15. Section 7003 of RCRA, 42 U.S.C. § 6973, provides in pertinent part:

[U]pon receipt of evidence that the past or present handling, . . . or disposal of any solid waste . . . may present an imminent and substantial endangerment to health or the environment, the Administrator may bring suit . . . against any person . . . who has contributed or who is contributing to such handling . . . or disposal . . . to order such person to take such . . . action as may be necessary

16. Pursuant to Section 106(a) of CERCLA, 42 U.S.C. § 9606(a), and Section 7003 of RCRA, 42 U.S.C. § 6973, Defendants are liable to perform response actions identified in the 2006 ROD with respect to the Treece Subsite.

SECOND CLAIM FOR RELIEF

(Cost recovery pursuant to CERCLA Section 107(a), 42 U.S.C. § 9607(a))

17. Paragraphs 1 through 16 of this Complaint are incorporated herein by reference.

18. Pursuant to Section 107(a)(2) of CERCLA, 42 U.S.C. § 9607(a)(2), Defendants are liable for response costs incurred by the United States in connection with the Treece Subsite except as specifically provided in the 2000 Consent Decree.

THIRD CLAIM FOR RELIEF

(Declaratory judgment pursuant to CERCLA Section 113(g)(2), 42 U.S.C. § 9613(g)(2))

19. Paragraphs 1 through 18 of this Complaint are incorporated herein by reference.

20. Pursuant to Section 113(g)(2) of CERCLA, 42 U.S.C. § 9613(g)(2), the United States is entitled to a declaratory judgment of liability against Defendants that will be binding in any subsequent action to recover further response costs incurred by the United States for response actions in connection with the Subsite except as specifically provided in the 2000 Consent Decree.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff requests that this Court:

1. Order the Defendants to perform response actions selected by EPA in the 2006 ROD with respect to the Treece Subsite;
2. Enter judgment in favor of the United States against Defendants for unreimbursed response costs incurred by the United States in connection with the Treece Subsite, plus interest, except as specifically provided in the 2000 Consent Decree.
3. Enter a declaratory judgment of liability against Defendants pursuant to Section 113(g)(2) of CERCLA, 42 U.S.C. § 9613(g)(2), in favor of the United States that will be binding in any subsequent action to recover further response costs incurred in connection with the Treece Subsite except as specifically provided by the 2000 Consent Decree ; and
4. Grant such other and further relief as the Court deems appropriate.

Pursuant to Local Rule 40.2, the United States requests that Wichita, Kansas, be designated as the place of trial.

Respectfully submitted,

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